STATE OF MICHIGAN

COURT OF APPEALS

JOHN W. KING, Personal Representative of the Estate of KENNETH ALAN KING, deceased,

Plaintiff-Appellant,

V

DONALD N. REED, JR., M.D., and DONALD N. REED, JR., M.D., P.C.,

Defendants-Appellees,

and

JOHN DYKES, II, M.D., GENESYS CARDIOVASCULAR & THORACIC SURGERY ASSOCIATION, and GENESYS REGIONAL MEDICAL CENTER,

Defendants.

FOR PUBLICATION
April 8, 2008

No. 269760
LC No. 03-075649-NM
Genesee Circuit Court

Advance Sheets Version

Before: Wilder, P.J., and Borrello and Beckering, JJ.

WILDER, P.J. (*concurring*).

I join in the majority opinion in parts I and II (B), and agree with the result reached by the majority in part II (A). I write separately with regard to the result reached in part II (A) in order to state a differing view on the rule of statutory construction applicable to our interpretation of MCL 600.2912d. Although my disagreement with the majority's analysis is not outcome-determinative in this particular case, nevertheless, I put pen to paper in the event that this disagreement proves to be significant in a future case.

As noted by the majority, in determining whether plaintiff was required to file another (or amended) affidavit of merit at the time the amended complaint was filed in the lower court, this Court is required to interpret MCL 600.2912d. MCL 600.2912d provides, in relevant part:

> (1) Subject to subsection (2), the plaintiff in an action alleging medical malpractice or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169. The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff's attorney concerning the allegations contained in the notice and shall contain a statement of each of the following:
>
> (a) The applicable standard of practice or care.
>
> (b) The health professional's opinion that the applicable standard of practice or care was breached by the health professional or health facility receiving the notice.
>
> (c) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.
>
> (d) The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice.

The majority concludes that in determining the Legislature's intent in MCL 600.2912d, we must give the statutory language "a reasonable construction" that best accomplishes the purpose of the statute. See *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998).[1] I disagree that this is the appropriate rule of construction.

As recently noted by this Court, "[o]ur primary task in construing a statute is to discern and give effect to the intent of the Legislature. To do so, we begin with the language of the statute, *ascertaining the intent that may reasonably be inferred* from its language. The words contained in the statute provide us with the most reliable evidence of the Legislature's intent. …When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Kinder Morgan Michigan, LLC v City of Jackson*, 277 Mich App 159, 163; 744 NW2d 184 (2007) (citations and quotation marks omitted; emphasis added). Determining whether a certain legislative intent may be reasonably inferred from particular statutory language constitutes a different type of judicial analysis than

[1] At least one other panel of this Court has applied the "reasonable construction" rule of statutory construction. See, e.g., *Hill v LF Transportation, Inc*, 277 Mich App 500; 746 NW2d 118 (2008).

determining whether a certain construction of a statute is reasonable. Whether a particular construction of a statute is "reasonable" and best accomplishes the purposes of the statute could be subject to debate. See, e.g., *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 83 n7; 718 NW2d 784 (2006). In any event, a so-called "reasonable construction" that conflicts with the plain language of an unambiguous statute must defer to the intent inferred directly from the words of the statute.[2]

Here, the statutory language unambiguously states that an affidavit of merit must be filed with "the complaint." Because the statute does not refer to amendments to the complaint, I agree with the majority that plaintiff is not required to file an additional affidavit of merit at the time of the filing of an amended complaint.

/s/ Kurtis T. Wilder

[2] To do otherwise would be to second-guess the policy choice of the Legislature, a rule of construction that our Supreme Court repudiated when it rejected the use of the "absurd result" rule of statutory construction to interpret unambiguous statutory language. See *People v McIntire*, 461 Mich 147, 155-158; 599 NW2d 102 (1999).